UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,132	01/28/2004	Remy Zimmermann	09623V-047600US	4300

20350   7590   04/01/2008

TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

EXAMINER
ALVESTEFFER, STEPHEN D

ART UNIT	PAPER NUMBER
2175	

MAIL DATE	DELIVERY MODE
04/01/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Office Action Summary	10/767,132	ZIMMERMANN, REMY
	Examiner	**Art Unit**
	Stephen Alvesteffer	2173

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _14 January 2008_.
2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1,2,4-9,11-22,24,25,27,28 and 30-34_ is/are pending in the application.
   4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) _1,2,4-9,11-22,24,25,27,28 and 30-34_ is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a)☐ All   b)☐ Some * c)☐ None of:
   1. ☐ Certified copies of the priority documents have been received.
   2. ☐ Certified copies of the priority documents have been received in Application No. _____.
   3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)
1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This Office Action is responsive to the Request for Continued Examination (RCE) filed January 14, 2008. No claims are currently amended, added, or cancelled. Claims 1, 8, 15, 21, 24, and 27 are independent. Claims 1, 2, 4-9, 11-22, 24, 25, 27, 28 and 30-34 remain pending.

Claim Objections

Claim 4 is objected to because of the following informalities:

- "the emoticon graphic" of claim 4 lacks antecedent basis. Examiner believes that Applicant meant for "the emoticon graphic" to be –the graphic—

Appropriate correction is required.

Response to Amendment

The Declaration filed on January 14, 2008 under 37 CFR 1.131 is sufficient to overcome the Walter (2005/0156873) reference.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4-9, 11-22, 24, 25, 27, and 28 are rejected under 35 U.S.C. 102(e)

as being anticipated by Gokturk et al. (hereinafter Gokturk), United States Patent

Application Publication 2003/0235341.

Regarding claim 1, Gokturk teaches a system for mapping captured multimedia

information onto graphics for insertion into a communication using an Instant Messaging

(IM) application (see paragraph [0079]; *"Using the current invention, one can design an*

IM application where the user's facial impression is translated to an avatar and

transmitted as part of the user message"), wherein the insertion is based on multimedia

information, the system comprising: an information capture module for capturing the

multimedia information in the vicinity of a machine on which the user is using the IM

application (see Figure 8a and paragraph [0074]; *"Camera 810 captures the user image*

in real-time"); an information extraction and interpretation module communicatively

coupled with the information capture module, for extracting relevant information from the

captured multimedia information and interpreting it (see paragraph [0078]; *"Identifying*

objects in an image is the first step in performing more comprehensive image

processing to determine identity of a user or detect facial impressions such as happy

face, sad face, puzzled face, etc"); and a mapping module communicatively coupled

with the information extraction and interpretation module, for mapping the interpreted

information onto a graphic (see paragraph [0079]; *"The computer program maps the*

user impression to one of the predefined facial emotions represented with

corresponding avatar"); an Application Program Interface module for the IM application,

communicatively coupled to the mapping module, for inserting the graphic into the

communication in real time using the IM application, said inserting only occurring after

detecting a trigger from a user (see paragraph [0079]; "*Using the current invention, one*

can design an IM application where the user's facial impression is translated to an

avatar and transmitted as part of the user message").

Regarding claim 2, Gokturk teaches that the multimedia information comprises

at least one of audio information, still image information, and video information (see

paragraph [0079]; "*the camera captures the user image*").

Regarding claim 4, Gokturk teaches that the graphic is predefined by the IM

application (see paragraph [0079]; "*In the receiving computer, a table is maintained that*

maps the code to the stored image of the avatar. This table is used to map the code

back to the avatar representing the facial impression of the sender. Instead of a code

word, the application may choose to send the image of the avatar").

Regarding claim 5, Gokturk teaches that the graphic is predefined by a third-

party application (see paragraph [0079]; "*In the receiving computer, a table is*

maintained that maps the code to the stored image of the avatar. This table is used to

map the code back to the avatar representing the facial impression of the sender.

Instead of a code word, the application may choose to send the image of the avatar").

Regarding claim 6, Gokturk teaches that the graphic is created by the user (see

paragraph [0079]; "*the camera captures the user image*").

Regarding claim 7, Gokturk teaches that the graphic is created by the user by processing captured multimedia information (see paragraph [0079]; *"the camera captures the user image. By performing an image-processing algorithm, either on the local computer or a connected server (by first sending the image to server), a computer program analyses the facial impression of the user. The computer program maps the user impression to one of the predefined facial emotions represented with corresponding avatar"*).

Claims 8, 9, and 11-14 recite a method having substantially the same limitations as the system of claims 1, 2, and 4-7, respectively. Therefore, the claims are rejected under the same rationale. It should be noted that claims 11-13 refer to a plurality of graphics as opposed to a single graphic, which Gokturk also anticipates in paragraph [0079].

Claims 15 and 16 recite a method having substantially the same limitations as the system of claims 1 and 3, respectively. Therefore, the claims are rejected under the same rationale.

Regarding claim 17, Gokturk teaches storing the graphic for use in a later IM communication using the application (see paragraph [0079]; *"In the receiving computer, a table is maintained that maps the code to the stored image of the avatar"*).

Regarding claim 18, Gokturk teaches that the step of processing the received captured multimedia information to create a graphic comprises: reducing the size of the captured multimedia information (see paragraph [0075]; *"Instead of transmitting the entire image, only the relevant segment (in this case, the foreground picture of the user)*

is compressed and transmitted. For instance, if the size of the segment were 50% of the entire image, there would be an immediate corresponding saving in the bandwidth required to transmit the user face (compared to transmitting the entire image)").

Regarding claim 19, Gokturk teaches that the step of processing the received captured multimedia information to create a graphic comprises: reducing the resolution of the captured multimedia information (see paragraph [0077]; *"Since, presumably, the background content is either stationary or not very useful (in certain applications), it can be transmitted with a coarse resolution or/and less frequent (i.e. lower frame rate) compared to the foreground segment"*).

Regarding claim 20, Gokturk teaches that the step of processing the received captured multimedia information to create a graphic comprises: selecting a frame from a plurality of frames of the captured multimedia information (see paragraph [0079]; *"the camera captures the user image. By performing an image-processing algorithm, either on the local computer or a connected server (by first sending the image to server), a computer program analyses the facial impression of the user"*).

Claims 21 and 22 recite a system having substantially the same limitations as the system of claims 1 and 2, respectively. Therefore, the claims are rejected under the same rationale.

Claims 24 and 25 recite a method having substantially the same limitations as the system of claims 1 and 2, respectively. Therefore, the claims are rejected under the same rationale.

Claims 27 and 28 recite a system having substantially the same limitations as

the system of claims 1 and 2, respectively. Therefore, the claims are rejected under the

same rationale.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

Claims 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Gokturk (2003/0235341) *supra* and Day et al. (hereinafter Day), United States Patent

7,039,676.

Regarding claim 30, Gokturk teaches every limitation of claim 30 except that

said graphic represents motion by said user. However, Day teaches a system that

analyzes user motion to determine graphics to insert into real-time instant messages

(see Day column 3 line 36 through column 4 line 2; "*The system, method and program*

of the invention automatically generates input into chat room software that represents

an actual physical gesture made by a participant in a real time communication over a

network, such as a "live" chat session or an instant messaging communication"). It

would have been obvious to one of ordinary skill in the art at the time the invention was

made to use the motion and gesture analysis system of generating emoticons of Day to

generate the custom icons in the invention of Gokturk for the purpose of making it

easier for users to generate custom emoticon graphics for transmitting over instant message sessions.

Regarding claim 31, Gokturk/Day teaches that said trigger is a gesture by said user (see Day column 3 line 36 through column 4 line 2; "*A video camera, utilized in connection with the participants' computer system, captures the real time gestures made by the participant, such as a wave, a shoulder shrug, a nodding of the head, and inputs the captured video images into the computer system of the participant*", receiving a gesture is the action that triggers the system to generate an emoticon graphic).

Regarding claim 32, Gokturk/Day teaches that said relevant information extracted by said information extraction and interpretation module is in a non graphic format (see Day column 8 lines 16-26; "*since the configuration process has defined each gesture with a corresponding action, a database or table 300 (FIG. 3) becomes populated with the gesturing events 301, state of gesture 302, and corresponding action 303 and parameter of the action 304, i.e., the content to be transmitted for the gesturing event*").

Regarding claim 33, Gokturk/Day teaches that said relevant information extracted by said information extraction and interpretation module is mapped to one of a preselected group of graphics, including graphics representing a smile, a frown and a wink (see Day column 7 lines 48-58; "*the automatic gesture software may provide a set of available gestures, e.g., wave hand, smile, frown, wink, shrug, nod, for which the user may designate the action (announce, insert text, insert graphic,) and the parameter of the action (e.g., the content or translation of the gesture)*").

Regarding claim 34, Gokturk/Day teaches that said relevant information extracted by said information extraction and interpretation module is an article worn by said user (see Day column 6 lines 15-32; "*The imaging software analyzes various features of a participant from captured video frames generated by video camera 115. For example, the imaging software may discern any one or more of the following features including, but not limited to, the head, eyes, mouth (lips), shoulders, arms, and hands. For example, the imaging software can detect whether the head nods up and down in successive frames, or if there is a prolonged "wink" in one eye, or if the mouth makes a smile or frown, or if the shoulders "shrug", or if an arm or hand moves across the captured video frames such as in depicting a wave or other gesture*", the imaging software described by Day is capable of detecting and interpreting articles worn by a user).

Response to Arguments

Applicant's arguments with respect to claims 1, 2, 4-9, 11-22, 24, 25, 27, 28 and 30-34 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Alvesteffer whose telephone number is (571)270-1295. The examiner can normally be reached on Monday-Friday 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Dennis Chow can be reached on (571)272-7767. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Stephen Alvesteffer
Examiner
Art Unit 2173

/S. A./
Examiner, Art Unit 2173

/Tadesse Hailu/
Primary Examiner, Art Unit 2173